

Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

19-SGD-0008

MAR 13 2019

Ms. Alexandra K. Smith, Program Manager
Nuclear Waste Program
Washington State Department of Ecology
3100 Port of Benton Boulevard
Richland, Washington 99354

Dear Ms. Smith:

**STATEMENT OF DISPUTE REGARDING DISAPPROVAL OF HANFORD FEDERAL
FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) CHANGE
CONTROL FORM M-15-18-03**

This letter transmits the Statement of Dispute for Milestone M-015-93C to the Interagency Management Integration Team (IAMIT). The statement of dispute explains why the U.S. Department of Energy, Richland Office (RL) believes there is good cause to extend the Tri-Party Agreement Milestone M-015-93C, preparatory to dispute resolution discussions with the IAMIT.

If you have any questions, please contact me or your staff may contact Mike Cline, of my staff, on (509) 376-6070.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Hamel", is written over a horizontal line.

William F. Hamel, Assistant Manager
for the River and Plateau

SGD:KLH

Attachment

cc w/attach:

J. Atwood, YN
S. G. Austin, CHPRC
D. B. Bartus, EPA
J. Bell, NPT
S. L. Brasher, MSA
R. Buck, Wanapum
L. Contreras, YN
S. W. Davis, MSA
D. R. Einan, EPA

K. A. Elsethagen, Ecology
M. Johnson, CTUIR
S. Leckband, HAB
N. M. Menard, Ecology
K. Niles, ODOE
S. N. Schleif, Ecology
Administrative Record (M-015-93C,
200-SW-2)
Environmental Portal

1 I. NATURE OF DISPUTE

2
3 This dispute is raised pursuant to Article VIII, paragraph 30, of the Hanford Federal
4 Facility Agreement and Consent Order ("Tri-Party Agreement" or "TPA"), concerning
5 the disapproval of Hanford Federal Facility Agreement and Consent Order (Tri-Party
6 Agreement) Change Control Form M-15-18-03.
7

8 The U.S. Department of Energy, Richland Operations Office (DOE-RL) submitted via
9 letter (18-AMRP-120) TPA Change Control Form M-15-18-03 to the Washington State
10 Department of Ecology (Ecology) on June 19, 2018, one hundred three (103) days in
11 advance of the milestone due date in accordance with the TPA Action Plan Section 12.0.
12

13 DOE-RL proposed modifying the dates to Initiate Characterization Field Work for the
14 200-SW-2 Operable Unit landfills in accordance with the schedule in the approved
15 RI/FS/RFI/CMS Work Plan. Change Control Form M-15-18-03 proposed extending the
16 due date of interim milestone M-015-93C by 150 days, from September 30, 2018 to
17 February 27, 2019 in Appendix D of the TPA Action Plan as follows.
18

M-015-93C	Initiate characterization fieldwork for the 200-SW-2	09/30/2018
Lead Regulatory	Operable Unit landfills in accordance with the schedule in	02/27/2019
Agency: Ecology	the approved RI/FS/RFI/CMS Work Plan.	

19 **Note: Specific changes to Tri-Party Agreement Appendix D are displayed with double underline to**
20 **indicate addition of text and by strikethrough to indicate deletion of text.**
21

22 On July 3, 2018, DOE-RL had not received a response to the proposed milestone
23 extension within fourteen (14) days in accordance with TPA Action Plan, section 12.3.3
24 Response to Requests for Modifications, which constituted a disapproval by Ecology.
25

26 DOE-RL objected to Ecology's disapproval and initiated dispute resolution under TPA
27 Article VIII Resolution of Disputes, Paragraph 30, and Article XL Good Cause for
28 Extensions, Paragraph 124 in letter 18-AMRP-0135, "Initiation of Dispute Resolution
29 Regarding Disapproval of Hanford Federal Facility Agreement and Consent Order
30 (Tri-Party Agreement) Change Control Form M-15-18-03," dated July 9, 2019.
31

32 On July 9, 2018, Ecology sent letter 18-NWP-096 expressing concerns with the proposed
33 funding levels for Hanford cleanup efforts in the President's Federal Fiscal Year (FFY)
34 2019 budget, including the work associated with M-015-93C, and requested that
35 DOE-RL submit a supplemental budget request.
36
37
38
39
40
41

II. DOE-RL'S POSITION ON THE DISPUTE

43 On August 11, 2016, DOE-RL and Ecology approved DOE/RL-2004-60, REV. 1,
44 *200-SW-2 Radioactive Landfills Group Operable Unit RCRA Facility*
45 *Investigation/Corrective Measures Study/Remedial Investigation/Feasibility Study Work*
46 *Plan*. The document presents the work plan for a combined *Resource Conservation and*
47 *Recovery Act of 1976* (RCRA) facility investigation (RFI)/corrective measure study
48 (CMS) and remedial investigation (RI)/feasibility study (FS) to support final remedy
49 selection for the 200-SW-2 Operable Unit (OU) at the Hanford Site. This work is being
50 performed under the *Comprehensive Environmental Response, Compensation, and*
51 *Liability Act of 1980* (CERCLA) and RCRA, as amended by *Hazardous and Solid Waste*
52 *Amendment of 1984*. The scope of 200-SW-2 OU includes 24 landfills and 14 collocated
53 waste site. Seven of the landfills are RCRA treatment, storage, and/or disposal (TSD)
54 units and 17 are past-practice waste sites. The collocated sites include 11 unplanned
55 release (UPR) sites, the Z Plant burn pit, the T Ponds, and the 216-C-9 Pond. The
56 landfills are excavated trenches that received several waste types. The estimated project
57 schedule in Section 6 includes TPA milestones, field activities, and activity durations.
58 Any revision to the project schedule will be in accordance with Section 11.4 *DOE*
59 *Baseline Change Control Documentation, Multi Year Work Plan and Systems*
60 *Engineering Control Documents* of the TPA. The work plan includes the following
61 activities:

- 62 • Prepare and Submit Cumulative Impacts Evaluation Approach, Draft A,
- 63 • Prepare and Approve Cumulative Impacts Evaluation Approach, Rev. 0,
- 64 • Prepare Cumulative Impacts Evaluation (SW-2),
- 65 • Conduct Site Characterization (TPA Milestone M-015-93C)
- 66 • Prepare and Issue RFI/RI Report, Draft A
- 67 • Prepare and issue Corrective Action Decision/Proposed Plan, Draft A
- 68 • Submit 200-SW-2 OU RFI/CMS/RI/FS Report and PCAD/PP (TPA Milestone
- 69 M-015-93B)
- 70



Figure 6-1. 200-SW-2 OU Estimated Project Schedule

DOE-RL's ability to complete Milestone M-015-93C as described in the TPA Action Plan Appendix D was dependent on DOE-RL's receipt of sufficient appropriated funds. The TPA Article XLVIII, Paragraph 148.G provides that "If the congressional budget appropriation differs from the funding levels required to comply with any milestones or other requirements of the Agreement, [DOE-RL] shall take whatever action is appropriate under the Agreement. Such action may include submitting a change request in accordance with the Action Plan, Section 12.0 entitled Changes to the Agreement. The Parties shall attempt to reach agreement on adjustments in workscope or milestones consistent with the congressional appropriation which will minimize the impacts on the requirements of this Agreement...." In accordance with the requirements of this paragraph, DOE-RL submitted Change Control Form M-15-18-03 to Ecology and no response was received, constituting disapproval. DOE-RL disagrees with Ecology's disapproval as the FFY 2018 appropriation by Congress and the FFY 2019 President's budget request to Congress, respectively, were significantly less than the requested amount, resulting in a funding shortfall.

The funding shortfall left DOE-RL with insufficient resources to complete the work required to meet the milestone as available resources were utilized to complete emergent higher priority, higher risk work scope, including, but not limited to:

- Completion of Plutonium Finishing Plant (PFP) demolition: A contamination event at the PFP resulted in an 11-month stop work delay for all demolition activities. The PFP project had not requested funding for FY 2019 (FY 2019 funds are requested in FY 2017) and PFP was scheduled to be completed in FY 2018. Carryover funds within the PFP control point are being used to fund the remaining demolition activities. Lower priority work within the PFP control point incurred reduced funding.
 - Completion of PFP demolition is a high priority project for Ecology and the United States Environmental Protection Agency (EPA) as evidenced

- by their January 9, 2018 joint letter invoking TPA Article XXXII,
Creation of Danger, stop work.
- Monthly DOE-RL, Ecology and EPA unit manager meeting minutes document discussion of DOE-RL work priority and budget impacts due to PFP.
 - Quarterly DOE-RL, Ecology and EPA TPA milestone reviews discuss PFP progress, priority and budget concerns.

Tentative Agreement

A Tentative Agreement is a mechanism used by the Tri-Parties (DOE, Ecology, and EPA) to attempt to reach agreement on adjustments in workscope or milestones in instances where circumstances, such as changes in congressional appropriation, may affect milestones or activity within milestones.

Consistent with past practice, the proposed changes negotiated in a Tentative Agreement undergo a public comment period and comment resolution prior to final execution.

On approximately June 21, 2018, Ecology indicated that they did not want to resolve milestones individually due to the Fiscal year (FY) 2018 Appropriation and FY 2019 President's Budget. Ecology proposed and submitted a draft Tentative Agreement identifying milestone revisions, which included milestone M-015-93C. Ecology's suggestion that this and other milestones be addressed in a tentative agreement provides further affirmation that a change to the milestone was necessary and appropriate.

Ecology should accept the change control form for the reasons stated above. Additionally, as Ecology had initially suggested, DOE-RL believes attempting to reach a tentative agreement on extensions for M-015-93C and other related milestones may ultimately be the best forum to address current funding limitations.

III. SUPPORTING INFORMATION

On May 12, 2016, DOE-RL submitted a compliance budget request of \$1,030,000,000 for FY2018 to the U.S. Department of Energy Assistant Secretary for Environmental Management.

On June 7, 2017, DOE-RL held a public briefing on the FY2018 President's Budget of \$800,422,000.

On July 18, 2017, DOE-RL submitted a compliance budget request of \$1,385,000,000 for FY2019 to the U.S. Department of Energy Assistant Secretary for Environmental Management.

On May 23, 2018, a briefing on the FY2018 appropriation of \$947,422,000 and FY2019 President's Budget of \$747,097,000 was held with Ecology and EPA, which included discussion of budget impacts to milestones. Comprising FY2018 & 2019, compliance

budget requests amounted to \$2,415,000,000 of which \$1,902,549,000 had been appropriated, at \$513,481,000 compliance budget shortfall.

On July 19, 2018, RL submitted a notification that Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) interim milestone M-015-93C is at risk of not being met and request for extension of Tri-Party Agreement interim milestone M-15-18-03 (18-AMRP-0120).

On approximately June 21, 2018, Ecology submitted to DOE-RL (AMRP) a draft Tentative Agreement modifying several TPA milestones including milestone M-015-93C due to the FFY 2018 Appropriation and FFY 2019 President's Budget.

On July 5, 2018, DOE-RL (AMRP) submitted to Ecology via email, changes made to the draft Tentative Agreement.

DOE-RL initiated dispute resolution on July 9, 2018 (18-AMRP-0135). DOE-RL and Ecology attempted to informally resolve the dispute at the project manager level in accordance with the dispute resolution procedures of Article VIII of the Tri-Party Agreement.

Informal resolution of the dispute was extended from August 8, 2018 to October 31, 2018 to allow adequate time to resolve the dispute. DOE-RL met with Ecology on to review and discuss documents and information relative to the dispute.

DOE-RL and Ecology were unable to resolve the dispute at the Project Manager level and the dispute was extended from October 31, 2018 to December 31, 2018.

DOE-RL held two meetings with Ecology and EPA on December 13, 2018 and December 17, 2018 to brief them on the Integrated Priority List. DOE-RL drafted an Agreement in Principle (AIP) and updated the Tentative Agreement for Ecology's review. It was agreed to at these meetings to include all milestones impacted by both the FY2018 and FY2019 Budget appropriations.

DOE-RL and Ecology were unable to resolve the dispute at the Project Manager level and the dispute was extended from December 31, 2018 to February 28, 2019.

On February 14, 2019, Ecology notified DOE-RL via email that they did not believe the dispute on M-015-93C could be resolved at the Project Manager level and requested to elevate the dispute to the Inter-Agency Management Integration Team (IAMIT). No explanation was provided as to why Ecology now wants to dispute this milestone separate from the other milestones at risk.

DOE-RL and Ecology were unable to resolve the dispute at the Project Manager level and the dispute was extended from February 28, 2019 to March 14, 2019 to allow both Parties time to prepare a Statement of Dispute for submittal to the IAMIT for resolution.

Additional Funding Information

As noted in Section II above, DOE-RL experienced a significant budget shortfall in FFY 2018 and FFY 2019. This budget shortfall was subsequently exacerbated by several significant events that required immediate funding even though these events were not contemplated in formulating DOE-RL's budget request in FFY 2018.

Good cause exists for an extension of a Milestone when a "force majeure" event has occurred¹. Force majeure is an "event arising from causes beyond the control of a Party that causes delay in or prevents the performances of any obligation under this Agreement".² Force majeure including "insufficient availability of appropriated funds, if DOE shall have made timely request for such funds as part of the budgetary process as set forth in Article XLVII (Cost, Schedule, Scope, Integration, Planning and Reporting) of this Agreement."³

The discussion of the facts of this issue, as presented in the preceding sections, indicate that there was an insufficient availability of appropriated funds, and that DOE-RL worked to identify resulting impacts and establish work scope priorities in good faith based upon Ecology input and direct actions. Ultimately, the milestone work could not be completed due to insufficient funding; therefore, an extension request must be approved to establish a new milestone date for this activity.

IV. HISTORY OF ATTEMPTED RESOLUTION

- **June 19, 2018:** DOE-RL submitted letter 18-AMRP-0120 to Ecology, Notification that Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Interim Milestone M-015-93C is at Risk of Not Being Met and Request for Extension of Tri-Party Agreement Interim Milestone M-15-18-03.
- **June 21, 2018 (approximate):** Ecology submitted to DOE-RL (AMRP) a draft Tentative Agreement modifying several TPA milestones including milestone M-015-93C due to the FFY 2018 Appropriation and FFY 2019 President's Budget.
- **July 3, 2018:** Ecology did not respond to the submitted Change Control Form M-15-18-03 within the 14-day TPA required time, resulting in a disapproved change control form.
- **July 5, 2018:** DOE-RL (AMRP) submitted to Ecology via email, changes made to the draft Tentative Agreement.
- **July 9, 2018:** Ecology letter 18-NWP-096, Supplemental Budget Request for Federal Fiscal Year 2019.

¹ Article XL. GOOD CAUSE FOR EXTENSIONS

² Article XLVII. FORCE MAJEURE

³ Id. at G

- **July 9, 2018:** DOE-RL submitted letter 18-AMRP-0135 to Washington State Department of Ecology, Initiation of Dispute Resolution Regarding Disapproval of Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Change Control Form M-15-18-03.
- **August 6, 2018:** Dispute at the Project Manager's level extended until October 31, 2018.
- **August 13, 2018:** DOE-RL received edits to the proposed Tentative Agreement form Ecology and EPA that includes the milestone M-015-93C.
- **October 1, 2018:** Dispute at the Project Manager's level extended until December 31, 2018.
- **November 13 & 17, 2018:** A briefing was held with the regulators to review the DOE-RL Profile by Congressional Control Point, Accomplishments in FY2018 and Planned Accomplishments in FY2019.
- **December 11, 2018:** Dispute at the Project Manager's Level extended February 28, 2019.
- **December 19, 2018:** DOE-RL submitted the draft Agreement in Principle and Tentative Agreement to Ecology for review, the draft Tentative Agreement proposes modifying several TPA milestones including milestone M-015-93C due to the FFY 2018 Appropriation and FFY 2019 President's Budget.
- **February 22, 2019:** Dispute at the Project Manager's level extended until March 14, 2019.

V. REFERENCES

- Ecology, EPA, and DOE, 1989, *Hanford Federal Facility Agreement and Consent Order*, Washington State Department of Ecology, U.S. Environmental Protections Agency, and U.S. Department of Energy, Olympia, Washington, as amended.
- Tentative Agreement, *Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Revisions for Central Plateau Cleanup* May 2016.
- Change Control Form M-15-16-02, *Addition To and Modification of Ecology Lead Regulatory Agency Milestones within the M-015 Series "Complete the RI/FS (or RFI/CMS and RI/FS) Process for All Non-Tank Farm Operable Units Except for Canyon/Associated Past Practice Waste Site OUs Covered in M-85-00"*, approved May 20, 2016.
- DOE/RL-2004-60, REV. 1, *200-SW-2 Radioactive Landfills Group Operable Unit RCRA Facility Investigation/Corrective Measures Study/Remedial Investigation/Feasibility Study Work Plan*, June 2016.

Administrative Record 0065834H, *River Corridor/Central Plateau Quarterly Tri-Party Agreement Milestone Review Meeting Minutes March 15, 2018*. DOE-RL milestone review meeting minutes identifying M-015-93C as “At Risk”.

18-AMRP-0120, *Notification that Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Interim milestone M-015-93C is at Risk of not being met and request for extension of Tri-Party Agreement Interim Milestone M-15-18-03*. Letter to Alex K Smith, Washington State Department of Ecology, from Joe R Franco, U.S. Department of Energy, June 19, 2018.

Tentative Agreement, *Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Revisions in Response to Federal Fiscal Year (FFY) 2018 Appropriation and FFY 2019 President’s Budget*, Draft, December 2018.

On July 5, 2018, DOE-RL (AMRP) submitted to Ecology via email, changes made to the draft Tentative Agreement

18-AMRP-0135, *Initiation of Dispute Resolution Regarding Disapproval of Hanford Facility Agreement and Consent Order (Tri-Party Agreement) Change Control Form M-15-18-03*. Letter to Alex K Smith, Washington State Department of Ecology, from Joe R Franco, U.S. Department of Energy, July 9, 2018.

18-NWP-096, *Supplemental Budget Request for Federal Fiscal Year 2019*. Letter to Doug S. Shoop, U.S. Department of Energy, from Alex K. Smith, Washington State Department of Ecology, July 9, 2018.

Administrative Record 0064947H, *Extension at the Project Manager Level for the Hanford Federal facility Agreement and Consent Order (Tri-Party Agreement) Dispute Regarding Disapproval of Change Control Form M-15-18-03*. Signed by Michael Cline, U.S. Department of Energy and Kelly Elsethagen, Washington State Department of Ecology, August 6, 2018.

Administrative Record 0064651H, *Extension at the Project Manager Level for the Hanford Federal facility Agreement and Consent Order (Tri-Party Agreement) Dispute Regarding Disapproval of Change Control Form M-15-18-03*. Signed by Michael Cline, U.S. Department of Energy and Kelly Elsethagen, Washington State Department of Ecology, October 1, 2018.

Administrative Record 0064103H, *Extension at the Project Manager Level for the Hanford Federal facility Agreement and Consent Order (Tri-Party Agreement) Dispute Regarding Disapproval of Change Control Form M-15-18-03*. Signed by Michael Cline, U.S. Department of Energy and Kelly Elsethagen, Washington State Department of Ecology, December 11, 2018.

Administrative Record 0063858H, *Extension at the Project Manager Level for the Hanford Federal facility Agreement and Consent Order (Tri-Party Agreement)*

327 *Dispute Regarding Disapproval of Change Control Form M-15-18-03*. Signed by
328 Michael Cline, U.S. Department of Energy and Kelly Elsethagen, Washington
329 State Department of Ecology, February 22, 2019.



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

JUN 19 2018

18-AMRP-0120

Ms. Alexandra K. Smith, Program Manager
Nuclear Waste Program
Washington State Department of Ecology
3100 Port of Benton Boulevard
Richland, Washington 99354

Dear Ms. Smith:

NOTIFICATION THAT HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) INTERIM MILESTONE M-015-93C IS AT RISK OF NOT BEING MET AND REQUEST FOR EXTENSION OF TRI-PARTY AGREEMENT INTERIM MILESTONE M-15-18-03

The purpose of this letter is to notify the Washington State Department of Ecology (Ecology) that the Tri-Party Agreement Interim Milestone M-015-93C, "Initiate characterization field work for the 200-SW-2 Operable Unit landfills in accordance with the schedule in the approved RI/FS/RFI/CMS Work Plan," is at risk of not being met.

The U.S. Department of Energy Richland Operations Office (RL) currently has insufficient funding to meet all Tri-Party Agreement obligations with the recent approval of the Fiscal Year 2018 Budget and competing priorities of the site. This presents good cause to extend the milestone due date by 150 days based on Article XLVIII Cost, Schedule, Scope, Integration, Planning, and Reporting of the Agreement.

In accordance with Tri-Party Agreement Action Plan, Section 12.0, RL requests approval of the attached Change Control Form M-15-18-03 to extend the due date for Tri-Party Agreement Interim Milestone M-015-93C from September 30, 2018, to February 27, 2019.

The extension of the milestone due date and draft Change Control Forms have been discussed with Ecology's project staff.

Ms. Alexandra K. Smith
18-AMRP-0120

-2-

JUN 19 2018

If you have any questions, please contact me or your staff may contact Mike Cline, of my staff, on (509) 376-6070.

Sincerely,


Joe R. Franco, Assistant Manager
for the River and Plateau

AMRP:MWC

Attachment

cc w/attach:

S. G. Austin, CHPRC

J. Bell, NPT

S. L. Brasher, MSA

R. Buck, Wanapum

S. W. Davis, MSA

D. R. Einan, EPA

K. A. Elsethagen, Ecology

S. Hudson, HAB

M. Johnson, CTUIR

R. Longoria, YN

N. M. Menard, Ecology

K. Niles, ODOE

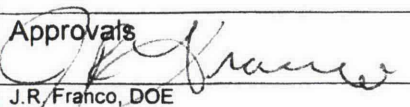
J. B. Price, Ecology

D. Rowland, YN

S. N. Schleif, Ecology

Administrative Record (M-015-93C, 200-SW-2)

Environmental Portal

Change Number M-15-18-03	Federal Facility Agreement and Consent Order Change Control Form		Date 04/12/2018
Originator Mike Cline		Phone 376-6070	
Class of Change <input type="checkbox"/> I – Signatories <input checked="" type="checkbox"/> II – Executive Managers <input type="checkbox"/> III – Project Managers			
Change Title Extend Due Date of Interim Milestone M-015-93C in TPA Action Plan, Appendix D			
Description/Justification of Change <p>This change control form extends the due date of interim milestone M-015-93C by 150 days, from 9/30/2018 to 2/27/2019. Interim milestone M-015-93C requires the U.S. Department of Energy (DOE) to "Initiate characterization field work for 200-SW-2 Operable Unit landfills in accordance with the schedule in the approved RI/FS/RFI/CMS Work Plan".</p> <p>DOE RL currently has insufficient funding to meet all TPA obligations with the recent approval of the FY2018 Budget and competing priorities of the site. This presents good cause to extend the milestone due date by 150 days based on Article XLVIII. Force Majeure, 145.G "insufficient availability of appropriated funds, if DOE shall have made a timely request for such funds as part of the budgetary process as set forth in Article XLVIII (Cost, Schedule, Scope, Integration, Planning and Reporting) of this Agreement".</p>			
Impact of Change This change control form extends the due date of interim milestone M-015-93C by 150 days, from 9/30/2018 to 2/27/2019. There is no impact to major milestone M-015-00 with this change.			
Affected Documents The Hanford Federal Facility Agreement and Consent Order (HFFACO), as amended, and Hanford Site internal planning management, and budget documents (e. g., USDOE and USDOE contractor Baseline Change Control documents, Project Management Plans).			
Approvals  J.R. Franco, DOE		Date <u>6/18/18</u> Approved <input checked="" type="checkbox"/> Disapproved <input type="checkbox"/>	Page 1 of 2
A.K. Smith, Ecology N/A		Date _____ Approved _____ Disapproved _____	
EPA		Date _____ Approved _____ Disapproved _____	

Authorized Changes

Modifications to HFFACO Appendix D, "Milestones and Target Dates Including Designation of Lead Regulatory Agency," are denoted by using ~~strikeout~~ to indicate text deletions and double underline to indicate text additions.

Number	Milestone	Due Date
M-015-93C Lead Regulatory Agency: Ecology	Initiate characterization field work for the 200-SW-2 Operable Unit landfills in accordance with the schedule in the approved RI/FS/RFI/CMS Work Plan.	09/30/2018 <u>02/27/2019</u>

From: Franco, Joe R
Sent: Thursday, July 05, 2018 10:03 AM
To: Price, John (ECY) <jpri461@ecy.wa.gov>
Subject: Tentative Agreement FFY18 and 19 budget impacts

John

A couple of redlines nothing major.

I am awaiting feedback from Erik Olds on the public comment period proposed. He is checking with ur HQ folks. I am gone next week to DC but will be following email traffic. If you need to chat text me and/or call my cell.

Joe

Joe Franco
Assistant Manager for River and Plateau
Richland Operations Office
Department of Energy
(509)376-8806 office
(509)578-0870 cell

AMRP the cleanup team.

**Hanford Federal Facility Agreement and Consent Order
(Tri-Party Agreement)**

**Tentative Agreement
on
Hanford Federal Facility Agreement and Consent Order Revisions in
Response to Federal Fiscal Year (FFY) 2018 Appropriation and FFY 2019
President's Budget**

July 2018



Tri-Party Agreement

U.S. Department of Energy
Washington State Department of Ecology
U.S. Environmental Protection Agency

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**TENTATIVE AGREEMENT On Hanford Federal Facility Agreement and Consent Order
Revisions in Response to Federal Fiscal Year (FFY) 2018 Appropriation and FFY 2019 President's
Budget**

The U.S. Department of Energy, Richland Operations Office (DOE-RL), the Washington State Department of Ecology (Ecology), and the U.S. Environmental Protection Agency (EPA), hereinafter referred to as the Parties, entered into negotiations on milestone revisions.

HFFACO Paragraph 148.A requires DOE-RL to include in its annual budget request to the DOE Office of Environmental Management (DOE-EM) estimated funding levels required to achieve full compliance with HFFACO milestones. The FFY 2018 appropriation by Congress and the FFY 2019 President's budget request to Congress, respectively, were less than the DOE-RL estimated funding levels submitted to DOE-EM. HFFACO Paragraph 149.G allows DOE-RL to propose changes to milestones in response to congressional budget appropriations that are less than estimated funding levels required to achieve full compliance. HFFACO Paragraph 149.D states that DOE-RL shall assess the impacts of the President's budget on DOE-RL's ability to complete milestones on time.

DOE-RL has responded to the FFY 2018 Congressional appropriation and the FFY 2019 President's budget by proposing one-year delays to some HFFACO milestones. The Parties anticipate substantial public interest in some of the proposed delays. Therefore, the Parties have agreed to take public comment on the proposed delays before agreeing to change the affected milestones. The Parties have also agreed to a day-for-day extension, until 30 days after the end of the public comment period, ~~in for~~ DOE-RL's duty to submit signed change packages in accordance with HFFACO 30.F.

Change Control Form

Title

M-15-18-02	Modification of Interim Milestone M-15-93c
M-15-18-03	Modification of Interim Milestone M-15-110b
M-16-18-01	Modification of Interim Milestone M-16-250
M-85-18-01	Modification of Interim Milestone M-85-70

This Tentative Agreement and the HFFACO Change Control Forms are subject to public comment and modification, as required. A notice of the upcoming public comment period for the HFFACO Change Control Forms will be distributed to the public, followed by a 45-day public comment period. Upon conclusion of the public comment period, the Parties will consider the comments and the HFFACO Change Control Forms will be revised, as appropriate. When agreed upon, the HFFACO Change Control Forms will be approved by the Parties, then incorporated into the HFFACO.

Unresolved revisions will be subject to HFFACO dispute resolution beginning at the Interagency Management Integration Team level as provided for in HFFACO Article VIII and/or XVI.

This Tentative Agreement is to take effect upon the signatures of the Parties.



**TENTATIVE AGREEMENT On Hanford Federal Facility Agreement and Consent Order
Revisions in Response to Federal Fiscal Year (FFY) 2018 Appropriation and FFY 2019 President's**

Budget
TENTATIVE AGREEMENT
ON

**NEGOTIATIONS OF HANFORD FEDERAL FACILITY AGREEMENT AND
CONSENT ORDER REVISION ON MAJOR MILESTONE M-092-00, COMPLETE
ACQUISITION OF NEW FACILITIES, MODIFICATION OF EXISTING
FACILITIES, AND/OR MODIFICATION OF PLANNED FACILITIES
NECESSARY FOR THE STORAGE, TREATMENT/PROCESSING, AND
DISPOSAL OF HANFORD SITE CESIUM AND STRONTIUM CAPSULES
(Cs/Sr), BULK SODIUM (Na), AND 300 AREA SPECIAL CASE WASTE (SCW)**

Joe R. Franco, Assistant Manager
for the River and Plateau
U. S. Department of Energy
Richland Operations Office

Date

Alexandra K. Smith, Program Manager
Nuclear Waste Program
Washington State
Department of Ecology

Date

David R. Einan, Manager
Office of Environmental Cleanup
Hanford Project Office

Date

U.S. Environmental Protection Agency

Proposed milestone modifications, and new proposed interim milestones are provided below:

Insert change forms following



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

18-AMRP-0135

JUL 09 2018

Ms. Alexandra K. Smith, Program Manager
Nuclear Waste Program
Washington State Department of Ecology
3100 Port of Benton Boulevard
Richland, Washington 99354

Dear Ms. Smith:

INITIATION OF DISPUTE RESOLUTION REGARDING DISAPPROVAL OF HANFORD
FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY
AGREEMENT) CHANGE CONTROL FORM M-15-18-03

On June 19, 2018, the U.S. Department of Energy Richland Operations Office (RL) provided the Washington State Department of Ecology (Ecology) a Class II Tri-Party Agreement Change Control Form (M-15-18-03), transmitted by RL (18-AMRP-0120). The change control form proposed extension of the due date for Interim Milestone M-015-93C from September 30, 2018, to February 27, 2019. RL has not received a response to the proposed milestone extension and therefore RL considers the change request as disapproved by Ecology. The purpose of this letter is to invoke dispute resolution with Ecology pursuant to Tri-Party Agreement Article VIII Resolution of Disputes, Paragraph 30, and Article XL Good Cause for Extensions, Paragraph 124.

RL will make a good faith effort to informally resolve this dispute with Ecology at the Project Manager level.

If you have any questions, please contact me or your staff may contact Mike Cline, of my staff, on (509) 376-6070.

Sincerely,

Joe R. Franco, Assistant Manager
for the River and Plateau

AMRP:MWC

cc: See page 2

Ms. Alexandra K. Smith
18-AMRP-0135

-2-

JUL 09 2018

cc: S. G. Austin, CHPRC
D. B. Bartus, EPA
J. Bell, NPT
S. L. Brasher, MSA
R. Buck, Wanapum
S. W. Davis, MSA
D. R. Einan, EPA
K. A. Elsethagen, Ecology
S. Hudson, HAB
M. Johnson, CTUIR
R. Longoria, YN
N. M. Menard, Ecology
K. Niles, ODOE
D. Rowland, YN
S. N. Schleif, Ecology
Administrative Record (M-015-93C, 200-SW-2)
Environmental Portal



EXTENSION AT THE PROJECT MANAGER LEVEL FOR THE HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) DISPUTE REGARDING DISAPPROVAL OF CHANGE CONTROL FORM M-15-18-03

The U.S. Department of Energy, Richland Operations Office (RL) invoked the Tri-Party Agreement dispute resolution process with the Washington State Department of Ecology (Ecology) under Hanford Federal Facility and Consent Order (HFFACO) Article VIII, Resolution of Disputes, Paragraph 30, and Article XL Good Cause for Extensions, Paragraph 124 on July 9, 2018 (18-AMRP-0135). The Parties hereby agree to extend the period of dispute resolution for the HFFACO change control form M-15-18-03 at the project manager level until October 31, 2018. The Parties jointly determine that this extension is desirable to provide them additional time to reach resolution regarding the path forward for interim milestone M-015-93C.

Michael Cline 8/6/18
Michael Cline, date
Director, Soil and Groundwater Division
U.S. Department of Energy
Richland Operations Office

K. Elsethagen 8/6/18
Kelly Elsethagen, date
Waste Management Project Manager
Nuclear Waste Program, Waste Management Section
Washington State Department of Ecology

cc:


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Michael Cline, date
Director, Soil and Groundwater Division
U.S. Department of Energy
Richland Operations Office



Kelly Elsethagen, date
Waste Management Project Manager
Nuclear Waste Program, Waste Management Section
Washington State Department of Ecology

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 12/11/2018
date

Michael Cline,
Director, Soil and Groundwater Division
U.S. Department of Energy
Richland Operations Office

 12/11/18
date

Kelly Elsethagen,
Waste Management Project Manager
Nuclear Waste Program, Waste Management Section
Washington State Department of Ecology

cc:

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R.R. Skinnarland, Ecology
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From: [Elsethagen, Kelly \(ECY\)](#)
To: [Cline, Michael](#)
Cc: [Price, John \(ECY\)](#); [Howell, Theresa \(ECY\)](#); [Soto, Ed \(ECY\)](#)
Subject: RE: SWE-2 Dispute at the PM level
Date: Thursday, February 14, 2019 8:34:48 AM

Hi Mike,

After discussing with John Price, Ecology doesn't believe the dispute over M-15-93c can be resolved at the Project Manager level. We want to let the extension run out, and elevate the dispute to the IAMIT. We can ask for it to be on the IAMIT agenda on March 21.

Thank you,

Kelly Elsethagen
Waste Management Project Manager
Department of Ecology, Nuclear Waste Program
509-372-7923 (Office)
509-424-2514 (Cell)

From: Cline, Michael <michael.cline@rl.doe.gov>
Sent: Monday, February 4, 2019 9:51 AM
To: Elsethagen, Kelly (ECY) <kels461@ECY.WA.GOV>
Subject: SWE-2 Dispute at the PM level

Kelly,

The SW-2 Dispute at the PM level will expire this month. I do not see a lot of activity on the TA. Last I heard Ecology legal is reviewing it. I suggest we extend the dispute 2 more months to April 30, 2019. I have attached a letter for your signature reflecting this. Please let me know if you have any questions or concerns.

Michael Cline
Director, Soil and Groundwater Division
Department of Energy, Richland Operation Office
(509) 376-6070 office
(509) 438-9632 cell



EXTENSION AT THE PROJECT MANAGER LEVEL FOR THE HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) DISPUTE REGARDING DISAPPROVAL OF CHANGE CONTROL FORM M-15-18-03

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Michael Cline 2/22/2019

Michael Cline, date
Director, Soil and Groundwater Division
U.S. Department of Energy
Richland Operations Office

K. Elsethagen

2/22/2019

Kelly Elsethagen, date
Waste Management Project Manager
Nuclear Waste Program, Waste Management Section
Washington State Department of Ecology

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